

A bill to incorporate the Vicksburg and El Paso Railway company; read, and, on motion of Mr. Bogart, referred to a Select committee.

On motion of Mr. Sterne, the Senate adjourned until 10 o'clock to-morrow morning.

TUESDAY, January 27, 1852.

The Senate was called to order by the President, pursuant to adjournment—prayer by the Rev. Mr. Baggerly—roll called—quorum present.

The journal of yesterday was read and adopted.

The President appointed Messrs. Bogart, Eddy, Truit, Duggan and Dancy the committee to which was referred a bill to incorporate the Vicksburg and El Paso rail-way company.

Mr. Deane, from the committee on State Affairs, to which was referred a bill concerning irrigation property, reported the same back to the Senate and recommended its passage.

Mr. Merriman, from the committee on Public Debt, made the following report:

To the President of the Senate:

The committee on Public Debt, to whom was referred the memorial of E. W. Moore, formerly Commodore of the Texas navy, claiming, among other things, a balance due him from the Republic of Texas of thirteen hundred and eighty dollars 86 cents, being amount due on pay tickets which had been issued to certain seamen belonging to said navy named in document A, referred with said memorial, have investigated the above named claim set forth in said memorial, and the documents and evidence to sustain the same, and find the following facts:

First. That the persons named in Document A were seamen in the navy of the Republic of Texas, and that pay tickets were issued to them for their services; that they sold the same to sailor landlords and shipping masters in New Orleans; that afterwards, in the spring of 1843, said Moore was compelled to redeem said pay tickets with his own private means, as the sailor landlords and shipping masters who held them refused to ship any more men for the Texas navy, until said pay tickets were paid; and the said Moore paid the balance due on said tickets, in order to obtain seamen to man the naval vessels belonging to the Republic of Texas, and then in the port of New Orleans, under his

command. The pay tickets were duly transferred by the men to whom they were issued.

Second. That the claim of said Moore for the balance due on said pay tickets, with an abstract of the same duly certified by a commissioner for the State of Texas, of which document A is a copy, was filed in the office of the Auditor of the State before the 8th day of August, 1851, and a short time thereafter, the pay tickets were mailed in Philadelphia, Penn., directed to the Auditor. In consequence of mail failures, attributable mainly to the loss of the steamer Galveston on Ship Island shoal, in the month of August; and another steamer of the mail line between Galveston and New Orleans, the Mexico, having been blown ashore in Lavaca Bay, in the month of June, and was not got afloat for about two months, the mail in which these pay tickets were did not reach Austin until the 7th day of September, 1851, on which day they were received by the Auditor, as will appear by the copy of his letter to Commodore Moore, dated September 10, 1851.

But for the unavoidable delay caused by the wreck of said steamer, the pay tickets would have been in the hands of the Auditor before the law expired. The Auditor, upon receiving the pay tickets, wrote as follows, which letter is among the documents before the committee :

"AUDITOR'S OFFICE, Sept. 10, 1851.

"Com. E. W. MOORE :

"*Dear Sir*--Yours, under date of 17th ult., enclosing sundry pay tickets, was received per last night's mail. These claims not having been filed with the Auditor and Comptroller by the first Monday in September, 1851, are, according to laws, forever barred.

[Signed] "JNO. M. SWISHER."

Upon the facts above detailed, your committee are of opinion that the Auditor and Comptroller should have issued a second class certificate for such an amount as they might have found due the memorialist upon his claim; because the claim was filed within the time required by law, and the Purser's returns then in their office showed the claim to be due. The pay tickets were only evidences to support the claim, and proved nothing in addition to what the records in the office showed, except the transfers of the pay tickets, and the amounts endorsed on said tickets, which had been paid. The fact that these pay tickets were not received and filed in the Auditor's office until eight days after the expiration of the law, should form no excuse for their not having been acted upon, when the circumstances which caused

their delay were beyond the control of the memorialist. The expiration of the law did not, and has not, stopped the action of the Auditor and Comptroller under it. The law gave until the last moment of its expiration, the right to every person to file their claims against the State, in the Auditor's office. The Auditor and Comptroller are now acting upon claims so filed, and are daily issuing certificates upon them. The claim which the law required to be filed within a fixed time is one thing, the evidence to sustain that claim is another and different thing, and might come in whenever the claim was taken up for investigation. If the expiration of the law stopped all powers to investigate claims filed under it, then a work of nullity has for a long time past occupied the Auditor and Comptroller. If a law required suits to establish a right to be brought within a certain time, and a writ was brought within the time, could it not be tried after the expiration of the time, and evidence introduced at the trial to sustain it?

Your committee are of opinion that the memorialist is entitled to such amount as may be found due on his claim, and has the right to have the same audited and allowed; and, therefore, a majority of the committee have instructed me to report the accompanying bill, and recommend its passage.

F. H. MERRIMAN,
One of the Committee.

A bill to pay E. W. Moore certain second class claims therein named; read first time.

Mr. Reaves, from the committee on Education, reported back to the Senate a bill to incorporate Bastrop Educational Society, and recommended its passage.

Mr. Eddy, from the committee on Education, to which was referred a bill to establish and incorporate the Gonzales College, reported the same back and recommended its passage.

Mr. Truit, chairman of the committee on Roads, Bridges and Ferries, to whom was referred a bill to incorporate the Sabine Turnpike Company in Panola county, reported the same back to the Senate and recommended its passage.

Mr. Bogart, chairman of the committee on Counties and County Boundaries, reported back to the Senate a bill to create the county and territory of Bell into a separate land district, and recommended its passage.

Mr. Bogart, from the same committee, reported back to the Senate a bill to require the counties of Kaufman, Van Zandt and Wood to pay a portion of the old debt of Henderson county, and recommended its passage with the following amendment:

Amendment: "Provided that the county of Henderson shall pay her proportional part of the old debt of Nacogdoches county."

Mr. Dancy, from the committee on Internal Improvements, to which was referred a bill to incorporate the Brazos and Colorado Rail-road Company, reported the same back to the Senate and recommended its passage.

Mr. Gray made the following report:

The committee on the Judiciary have considered the petition of Joseph M. Royston and sundry other citizens of Bastrop county, praying amendments of the act to organize justices courts, &c. The suggestions in the petition meet the approval of the committee; and in order to remedy the evils complained of, report the enclosed bill to be entitled "An act to amend the 34th and 64th sections of the act to organize Justices Courts," &c.

A bill to amend the 34th and 64th sections of an act to organize justices courts, and to define the powers and jurisdiction of the same, approved March 20th, 1848; read first time.

Mr. Gray made the following report:

The committee on the Judiciary have considered three bills proposing to change the 3d and 9th Judicial districts, and to create the 13th district; and instruct me to return them to the Senate for its consideration. If it is expedient to create a new judicial district, the bills will accomplish that end satisfactorily.

Mr. Gray also made the following report:

The committee on the Judiciary have considered a bill to amend the 67th section of an act to regulate proceedings in the District Court. It proposes to require that all notices to take testimony by interrogations shall be served by the sheriff only; to which the committee are opposed. The law at present allows such notices to be served by any person who is competent to make returns under oath, which is more convenient and less expensive in practice than the amendment proposed would render it.

Mr. Gray also made the following report:

January 27, 1852.

The committee on the Judiciary have considered the petition of John M. Moody. He represents that himself and wife are about removing to the Utah territory, and desires the passage of some law to enable him to remove the children of his wife by a former husband with them. It appears that the children have a considerable estate, and their father's friends are opposed to their being taken away. Mr. Moody does not desire to take the property of the children, but to leave it in charge of some guardian. The committee would gladly recommend some measure to gratify the parental feelings of petitioner; but cannot do so in the mode

desired, without risking the welfare of the children. They therefore ask to be discharged from its further consideration.

P. W. GRAY.

Mr. Grimes introduced a bill supplementary to an act to establish a State Penitentiary; read first time.

On motion of Mr. Sterne, the rule was suspended, bill read second time and referred to the committee on the Penitentiary.

ORDERS OF THE DAY.

A bill to relinquish the right of the State to certain lands therein named; read third time, and passed by the following vote:

YEAS—Messrs. Bigelow, Bogart, Davis, Day, Doane, Ford, Gray, Grimes, Kinney, Merriman, Meusebach, Sterne and Wilson—13.

NAYS—Messrs. Burks, Dancy, Eddy, Hill, Reaves, Taylor and Truit—7.

A Bill for the relief of Alexander McKinzie; read second time and ordered to be engrossed.

A message was received from the House, informing the Senate that the House had passed a bill for the relief of Brigadier-General Edward H. Tarrant, and a bill supplementary to an act to locate permanently the county seat of Lavaca county, which originated in the Senate; also, that the House had passed a joint resolution fixing the term of office of the Commissioner of the General Land Office, which originated in the House.

The resolution of the Senate, requiring the committee on the Judiciary to inquire into the expediency of repealing all laws for the collection of debts in this State.

Mr. Merriman offered the following amendment:

Add to the resolution: "and further, to enquire into the expediency of providing for the election of three commissioners in each county of the State, who shall be in a state of clairvoyance, for the purpose of peeping into the future, and ascertaining those who may be honorable enough to discharge their debts, and tell the whereabouts of absconding debtors, and give them over to be punished by public opinion; and to take into consideration the propriety of repealing all criminal laws to compel men not to violate the principles of morality and the rights of others, with a *tapping clause*."

Mr. Taylor moved to lay the resolution and the amendment on the table; lost by the following vote:

YEAS—Messrs. Bigelow, Burks, Davis, Doane, Ford, Kinney, Merriman, Reaves, Taylor, Truit and Wilson—11.

NAYS—Messrs. Armstrong, Bogart, Dancy, Duggan, Eddy, Gray, Grimes, Hart, Hill, Meusebach, Parker and Williams—12.

The amendment was then rejected.

Mr. Hill offered the following amendment :

Insert after "State," the words—"hereafter contracted ;" which amendment was accepted.

The resolution was then adopted by the following vote :

YEAS—Messrs. Armstrong, Bogart, Dancy, Duggan, Eddy, Grimes, Hart, Hill, Kinney, Meusebach, Parker, Sterne and Williams—13.

NAYS—Messrs. Bigelow, Burks, Davis, Doane, Ford, Gray, Merriman, Reaves, Taylor, Truit and Wilson—11.

A message was received from the House, informing the Senate that the House had referred the "bill to require the return of field-notes in certain cases" to a select committee composed of Messrs. Johnson, Bryan of B. and Stewart, and request the like committee on the part of the Senate.

Messrs. Hart and Gray were appointed a committee on part of the Senate on the above bill.

A bill to establish a system of common schools—read by sections ; read second time.

Mr. Eddy moved to amend first section by striking out "one million," and inserting "two millions."

Mr. Dancy offered the following as a substitute for the amendment :

In sec. 1, strike out "one million," and insert "two millions," and add to section 1 : "provided said sum of two millions may be loaned for purposes of, or invested in, internal improvements so as to yield five per cent. interest per annum to the State." Rejected by the following vote :

YEAS—Messrs. Armstrong, Bogart, Burks, Dancy, Day, Doane, Ford, Meusebach and Williams—9.

NAYS—Messrs. Bigelow, Davis, Duggan, Eddy, Grimes, Hill, Merriman, Parker, Reaves, Sterne, Taylor, Truit and Wilson, 13.

The question then recurred on the amendment offered by Mr. Eddy.

Mr. Bogart moved a division of the question ; carried.

The yeas and nays were then called on striking out, and were as follows :

YEAS—Messrs. Burks, Dancy, Davis, Duggan, Eddy, Ford and Taylor—7.

NAYS—Messrs. Bigelow, Bogart, Day, Doane, Grimes, Hill,

Merriman, Meusebach, Parker, Reaves, Sterne, Truit, Williams and Wilson—14.

The Senate refused to strike out.

On motion of Mr. Wilson, the Senate adjourned until 3 o'clock p. m.

3 O'CLOCK, P. M.

Senate met—roll called—quorum present.

A bill to establish a system of common schools.

The question being on the adoption of the amendment offered by Mr. Eddy, to strike out "one million," and insert "two millions," was taken and the amendment rejected by the following vote :

YEAS—Messrs. Dancy, Davis, Duggan, Eddy, Gray, Grimes, Hill, Sterne, and Taylor—9.

NAYS—Messrs. Bigelow, Bogart, Burks, Day, Doane, Ford, Kinney, Merriman, Meusebach, Parker, Truit, Williams and Wilson—13.

Mr. Dancy offered the following amendment, to come in at the end of section 1 : "provided said sum of one million may be loaned for purposes of, or invested in, internal improvements, so as to yield five per cent. interest to the State ;" rejected.

Mr. Ford offered the following amendment :

In section 5, strike out "sixteen," and insert "nineteen ;" adopted.

On motion of Mr. Taylor, the 10th section was amended by inserting after "school," the words "or schools."

Mr. Wilson offered, as a substitute for the bill, "A bill to provide the means for the future establishment and support of common schools."

Mr. Gray offered the following amendment to the substitute :

"The Governor is hereby authorized to appoint a general school commissioner, whose duty it shall be, during the next two years, to visit the different sections of the State, and gather information concerning the educational wants and circumstances of the country ; and, also, to examine the school systems adopted in other States and countries, and to digest and report a school system for Texas, most applicable to her wants and position, for the action of the next Legislature : and the sum of two thousand dollars of the interest of the fund hereby set apart for educational purposes, is hereby appropriated to defray the expenses of such commissioner." Rejected.

The yeas and nays were then called, on the adoption of the substitute, and were as follows :

YEAS—Messrs. Ford, Merriman, Reaves, Sterne and Wilson, 5.

NAYS—Messrs. Bigelow, Bogart, Dancy, Davis, Doane, Duggan, Eddy, Gray, Grimes, Hill, Kinney, Meusebach, Parker, Taylor, Truit and Williams—17. Rejected.

Mr. Dancy offered the following amendment :

Strike out all after section 1, and add—

“Sec. 2. Said sum of fifty thousand dollars shall be distributed to the different counties of the State, in proportion to the number of children between the ages of six and nineteen. The assessors shall ascertain the number of said children in each county, and report the list to the Comptroller by the first day of October in each year; when said Comptroller shall draw upon the Treasurer for said amount due each county respectively, which shall be paid to the county treasurer of each county respectively. The county court of each county shall order said money to be paid to any teacher in their respective counties who produces satisfactory testimony to said court, that he has taught a child within the ages mentioned in this section, the proportional amount to which he may be entitled for teaching any scholar. The fund shall be distributed according to the number of free white children between the ages of six and nineteen, to the counties; and paid out by the county court, proportionally, for the education of said children. The parents of the children shall be at liberty to send their children to such school as they may think proper.” Rejected by the following vote:

YEAS—Messrs. Bogart, Burks, Dancy, Grimes and Merriman—5.

NAYS—Messrs. Bigelow, Davis, Duggan, Eddy, Ford, Gray, Hart, Hill, Meusebach, Parker, Reaves, Sterne, Taylor, Truit, Williams and Wilson—16.

The bill was then ordered to be engrossed by the following vote :

YEAS—Messrs. Bigelow, Bogart, Dancy, Davis, Doane, Duggan, Eddy, Ford, Gray, Grimes, Hart, Hill, Merriman, Meusebach, Parker, Reaves, Sterne, Taylor, Truit, Williams and Wilson—21.

NAY—Mr. Burks—1.

On motion of Mr. Eddy, the rule was suspended, bill read third time and passed.

Mr. Armstrong asked and obtained leave of absence until the second day of February next.

On motion of Mr. Taylor, Mr. Scott was excused from attendance on the Senate on account of sickness.

Mr. Davis introduced a bill to remove certain papers from the

county seat of Austin county and place them in the General Land Office; read first time.

On motion of *Mr. Davis*, the rule was suspended, bill read third time and referred to the committee on the Judiciary.

Joint resolution fixing the term of office of the Commissioner of the General Land Office; read first time.

On motion of *Mr. Parker*, the rule was suspended, bill read second time and referred to the committee on State Affairs.

A bill to provide for the payment of interest upon a portion of the debt of the late Republic of Texas therein named; read second time, and on motion of *Mr. Bigelow*, referred to the committee on Finance.

Joint resolution in relation to the meritorious services of Adolphus Sterne; read second time, and on motion of *Mr. Parker*, referred to the committee on State Affairs.

A bill to incorporate the Lavaca and Guadalupe Rail-road Company; read second time, and on motion of *Mr. Wilson*, referred to the committee on Internal Improvements.

A bill to provide for distributing public arms to the sixth military division of the State of Texas, organized at the present session of the Legislature; read second time, and on motion of *Mr. Bigelow*, referred to the committee on the Militia.

A bill to authorize the Auditor to settle the accounts of Wm. G. Cooke, as late Quartermaster-General; read and passed to a third reading.

A bill to amend an act approved January 28, 1850, concerning the corporation of the city of Nacogdoches, with the report of the committee on the Judiciary, offering an amendment thereto, was read; amendment adopted, and bill ordered to be engrossed.

A bill for the relief of George W. Browning; read and ordered to be engrossed.

A bill to provide for the erection of a State Capitol; read.

Mr. Grimes moved to fill the blank in fourth section with \$100,000.

On motion of *Mr. Bogart*, the bill was laid on the table.

Joint resolution proposing to amend the second section of the 10th article of the constitution, together with the report of the committee on Education, offering a substitute therefor, was read, and substitute adopted.

Mr. Hill moved to amend by striking out the third section; rejected by the following vote:

YEAS—Messrs. Burks, Dancy, Gray, Grimes, Hart, Hill, Meusebach, Parker, Sterne and Truitt—10.

NAYS—Messrs. Bigelow, Bogart, Davis, Doane, Duggan, Ed-

dy, Ford, Merriman, Reaves, Taylor, Williams and Wilson—12.

Mr. Gray moved to amend the first section by striking out the words "in any manner except by direct taxation."

On motion of Mr. Davis, the Senate adjourned until 10 o'clock tomorrow morning.

WEDNESDAY, January 28, 1852.

The Senate was called to order by the President pursuant to adjournment—prayer by the Rev. Mr. Baggerly—roll called—quorum present.

The journal of yesterday was read and adopted.

A message was received from the House, informing the Senate that the House had passed a bill to provide for the liquidation and payment of the debt of the late Republic of Texas, with amendments; and also, a bill to define the time of holding the courts in the twelfth judicial district; and that the House had concurred in the Senate's amendments to a bill for the relief of Benjamin Hubert.

Mr. Eddy presented the following protest:

To Hon. J. W. HENDERSON,

President of the Senate:

The undersigned respectfully protest against the passage of a bill to be entitled an act to quiet land titles within the limits of Peters' colony, and to provide for locating and surveying the lands and issuing the certificates and patents to which the colonists and contractors are entitled, as the yeas and nays were not entered on the journals when the vote was taken upon the bill on the 24th instant. The undersigned desire to state that they were opposed to the passage of the bill, and voted against it because they believed that injustice was done to the State. Take the most favorable view of the subject, by allowing the contractors the full benefit of the statement in the report of the committee, which gives them the benefit of the certificates issued by the State commissioner, and the contractors would only be entitled to eleven hundred and seventy-eight sections, if they had fulfilled their contracts in good faith. The bill proposes to give the contractors seventeen hundred sections in order to settle the difficulties between them and the settlers. This will be five hundred and twenty-two sections more than they are entitled to according to the committee's report, which we believe gives them several hundred sections more than they are *justly* entitled to according